1989

Burt v. Burt : Brief of Respondent

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH

DAVID BURT,	:	
Plaintiff/Respondent.	:	BRIEF OF RESPONDENT
vs.	:	
BETTY MAE BURT,	:	Case No. 890190CA
Defendant/Appellant.	:	Priority: 14b

RESPONDENT'S BRIEF ON APPEAL

AN APPEAL FROM A JUDGMENT OF THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY STATE OF UTAH, HONORABLE STANTON M. TAYLOR PRESIDING.

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SUMMARY OF THE ARGUMENT

The Appellant's basic claim on appeal is that the Trial Court did not properly divide the marital property of the parties and in particular, gave the Respondent an interest in her earnings on inherited funds. The Trial Court had broad equitable discretion in domestic relations matters and such equitable awards as were made in this case should not be overturned on appeal unless the Court acted arbitrarily or capriciously or where it is apparent by a proponderance that the Trial Court misapplied the law or the facts in determining a division of the property.

A thorough reading of the facts presented at the Trial support the Trial Court's conclusion and demonstrates that the Court attempted to equalize the parties after a forty (40) year marriage as much as possible. The Trial Court had both evidentiary and legal support for its decision and there is no evidence which clearly preponderates against a Trial Court decision and therefore, this Court should not substitute its Judgment for that of the Trial Court.

IN THE UTAH COURT OF APPEALS

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vs.	:	
BETTY MAE BURT,	:	Priority: 14b
Defendant/Appellant.	:	

STATEMENT OF JURISDICTION

Respondent has no quarrel with Appellant's Statement of Jurisdiction and the matter is properly before this Court pursuant to Section 78-2a-3(2)(h).

STATEMENT OF THE NATURE OF PROCEEDINGS

Respondent has no quarrel with Appellant's recitation of the Nature of Proceedings.

STATEMENT OF ISSUES PRESENTED

The gravamen of all the issues raised by the Appellant in this appeal can be reduced to one fairly simple issue and that is, whether or not the Trial Court Judge abused his discretion in making certain financial awards to the parties.

The Appellant has chosen to address a variety of issues, but in the pure sense, the only issue that existed between these parties at the time of the divorce, was a division of the marital property and a provision for the payment of debts and for the ongoing support of each party.

These financial decisions were made by the Court following a full hearing and the only issue properly before the Court is whether or not the Judge, who has great equitable latitude in these matters, abused that discretion.

DISPOSITION IN THE COURT BELOW

The Appellant filed a Divorce Complaint as the Plaintiff on April 24, 1987 and three (3) days thereafter, the Respondent filed a Divorce Complaint as Plaintiff. Two (2) cases were consolidated with the Appellant being listed as the Defendant and Respondent as the Plaintiff. (See Tp. 1-8)

Thereafter, temporary Orders, based upon an Order To Show Cause were filed in the case and a Pretrial Settlement Conference was held between the parties before the Domestic Relations Commissioner, Maurice Richards. The matter was heard on June 24, 1988, at which time Financial Declarations were being submitted, Proposed Settlements and testimony was taken and the Commissioner, issued a Recommended Order to the Court included inter alia a ruling that the increase of the Defendant's inheritance was a marital asset and therefore, was subject to an equitable division of marital property in the proceedings and that the home purchased by the Defendant using those proceeds was also therefore, a marital asset. (See Recommended Order of Commissioner. Volume 1 Record on Appeal)

The Appellant objected to that recommendation and the case was set for Trial on January 20, 1989. At the Trial both parties testified, exhibits were reviewed and the Court issued a Memorandum

Decision on February 8, 1989, upon which Findings of Fact, Conclusions of Law and Decree of Divorce were submitted, which were ultimately signed by the Judge on March 2, 1989. The Appellant filed her Notice of Appeal on the 28th day of March, 1989 to this Court.

STATEMENT OF THE FACTS

The Respondent has reviewed Appellant's Statement of the Facts on Page 4, 5 and 6 of Appellant's Brief. This does not give a complete factual picture that was presented to the Court, both at the time of the hearing before the Domestic Relations Commissioner and the hearing before the Trial Judge that are critical to a determination of this appeal. Therefore, Respondent will submit his own Statement.

Appellant and Respondent were married on the 5th day of March, 1947 in Idaho Falls, Idaho. At the time of their divorce they had been married approximately 42 years. (See Tp. 1) The parties had two (2) children born as issue of their marriage, both of whom had reached the age of majority by the time of Trial.

In the early part of the parties marriage, from approximately 1947 until the early 1960's, the Respondent was the primary income producer of the parties. (See Tp. 89) He was employed by the Federal Government and also maintained a part-time, in the home, watch repair business. (See Tp. 60) During this period of time the Appellant did not work, but spent her primary time with the children in raising them. The Respondent however, paid the mortgage payment on the home and all of the household expenses.

(See Tp. 92)

Beginning in the early 1960's, as the children reached teenage years, the Appellant began work at Whitehead Electric Company in Ogden, first on a part-time basis, working into a full-time position by the late 1960's, a position which she held until her retirement in 1987. During this time Appellant made approximately the same amount of money as the Respondent. Respondent retired in 1976 (Tp. 60) and began receiving his retirement on a monthly basis.

During this period of time, in approximately 1969 and 1972, at the time of the death of Appellant's parents, she received an inheritance from them in the sum of $71,600. Appellant then proceeded over the next fifteen (15) years to invest that money in stocks, bonds, CD's and other investment devises, while the Respondent continued to work and pay the monthly mortgage payment on the home and the basic household expenses. (See Tp. 178)

Essentially, the Appellant was allowed to take her money and use it for her own purposes. In most cases, buying expensive curio type items and indulging in her own private acquisition program. The Respondent however, continued to provide for the basic necessities for the parties. Although during this time the Appellant did make some improvements on the home, this was really her only contribution to the day to day living expenses of the parties.

The Judge summed it up best in his Memorandum Decision when he indicated that "the marital arrangement of the parties was

unique in that it created a situation of "what was hers was hers and what was his was theirs"". (See Page 2 of the Memorandum Decision)

By the time of the divorce the Respondent was receiving the sum of $1350 per month from his Federal Retirement. Although the Court found that he had an additional monthly income of approximately $616, this was primarily from the rental of his mother's home, which had been given to he and his brother and a small amount of money from his watch business. The income from the Respondent's watch business had steadily deteriorated to the time of Trial, primarily because all Respondent's equipment was aged and his business was geared to fixing mechanical watches, rather than the quartz watches which now form the bulk of the watch sales. (See Tp. 61-73)

The Appellant on the other hand, parlayed her $71,000 inheritance in to a small fortune, the sum of approximately $195,340, while the Appellant continued to provide for she and the family. Appellant used this money to purchase a new home and kept the balance in a variety of investment accounts by the time of the divorce.

The Appellant also retired from her work at Whitehead Electric and although she was not receiving retirement income, received $415 from Social Security, $515 from interest in dividends on her remaining funds and $185 from an IRA for a total monthly income of $1,115 at the time of the divorce. (See Tp. 111)

At the time of the divorce, the Respondent was living in the

parties home. The Appellant was living in the home she had purchased from her invested funds. Neither party was working. The Respondent had very little income from his watch business, both essentially were retired, living on the incomes that they had each made, either through retirement or investments, were living in separate residences and each maintaining separate property.

The Court was then called upon to divide the property and make appropriate financial arrangements between the parties, which it did following a complete hearing on the matter where both parties testified, numerous documents were received and the Court was fully advised as to their financial status.

The Court took the matter under advisement for a period of approximately two (2) weeks, issued a Memorandum Decision, making and equitable division of the property as set forth therein and from that decision, the Appellant appealed, primarily on the basis that she did not receive more property in the division made by the Court.

ARGUMENT

POINT I

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION AND IN FACT, ADDRESSED THE ISSUE OF THE RESPONDENT'S RETIREMENT IN MAKING ITS UTLIMATE PROPERTY DISPOSITION

Appellant complains in her first attack on the Court's finding, as she does throughout, that the Court in effect, failed to give her equitable treatment in the divorce and did not consider the Respondent's retirement in light of Woodward v. Woodward case,

656 P.2d 431 (1982).

Unfortunately, Appellant's position is both unsupported by the facts of the case and her reliance upon Woodward v. Woodward is misplaced.

There was ample testimony from the Trial indicating that by the time these parties filed for divorce, they had both retired, thus the Respondent's retirement had in fact, vested. It was paying him, at the time of the divorce, the sum of approximately $1300 per month, so this is not a question of deferred compensation or a wife taking a portion of retirement proceeds to be paid in the future.

It is clear from the Court's findings that bulk of Respondent's income, upon which he now lives, is his retirement. He does in fact, have a small income from a rental property and a very small income from watch repair, which is diminishing. In any event, the Court considered that income in determining that there was a disparity in property and income and in order to equalize those disparities that the Court found, based upon the values of the properties that the Appellant received in the divorce and had already taken, and after considering those things, awarded the Appellant permanent alimony in the sum of $300 per month. Thus the Court's method of equalizing both property and income, after considering all the factors, was to award the Appellant alimony, even though she is basically self-supporting with an income of $1115 per month.

It is important to note the exact language of the Woodward

case. The Court is directed to Justice Durham's specific comments on Page 432 in speaking of retirement benefits, Justice Durham states:

> "If the rights to those benefits are acquired during the marriage, then the Court must at least consider those benefits in making an equitable division of the marital assets."

In other words, while the Trial Court in Woodward utilized a formula, which the Supreme Court found acceptable, the basic ruling of the case is simply that retirement is a marital asset and must be considered by the Court in making an equitable distribution. In this case the Trial Court clearly considered Respondent's retirement income in making its equitable distribution and found, based upon a totality of the circumstances, that portion of the Respondent's retirement which should be awarded to the Appellant was in fact, the $300 a month alimony award.

In addition, the Appellant seems to dove-tail this same argument into the argument of the survivor annuity. It has never been held by this Court that a survivor annuity in the form of an insurance policy is a property right which must be awarded, in some percentage, to a spouse in a divorce proceeding. The survivor annuity in this case is simply an insurance policy that if the Respondent were to die, his designated survivor would receive an annuity in the form of a portion of his retirement. This normally is any individual whom the owner of the annuity would designate. Even if the Appellant can somehow bootstrap this argument in to the Woodward formula, the Woodward case only requires that the Court

consider these benefits in making an equitable distribution.

The Court heard evidence about the annuity, about the retirement and after looking at the totality of the circumstances, as a matter of equity, made the alimony award which is fully supportable by the facts and therefore, Appellant's argument has no merit whatsoever.

POINT II

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING THE SUM OF $300 PER MONTH, AS AND FOR ALIMONY

This argument is essentially the same as those addressed in Argument Point One above. The Appellant in her misguided greed, seems to interpret Supreme Court decisions as requiring that somehow equalizing income means a 50-50 treatment. Again, no Court has said that. This Court has constantly held in a variety of cases, including Stone v. Stone, 19 U.2d 378 (1967) and Harding v. Harding 488 P.2d 308 (1971), that divorce is an equity proceeding and the Trial Court should, as much as humanly possible, given the facts, attempt to achieve equity.

The Court knowing that the Respondent had a guaranteed income from retirement of approximately $1300 and additional income of approximately $600, which was not guaranteed, in the form of rents which may or may not continue and the form of watch repair which had diminished substantially, took into consideration those factors and the Appellant's $1100 income and awarded $300, which brought the incomes to approximately $1400 and $1600 respectively, or certainly an equitable division of income.

The Court also took in to consideration the fact that in the overall award of the personal and real property the Appellant received $28,987 of value in excess of Respondent and attempted to utilize the alimony provision to equalize that excess in the property award. All of this is appropriate and required in divorce proceedings.

In Watson v. Watson, 561 P.2d 1072 (Utah 1977) Justice Crockett made the observation:

> "it is further pertinent to observe that a divorce proceeding, is sometimes said to be equitable in the highest degree and that again, a Trial Court is to do equity."

Judge Taylor in this case did equity.

The problem is that the Appellant has never understood the term equity throughout her marriage as is evidenced by her own Trial Court testimony. The Court is directed to Page 214 of the Trial Transcript, when under cross-examination the Appellant acknowledged that from 1960 until 1987 she was on a joint bank account with the Respondent at Commercial Security Bank where she could draw checks and in fact, drew checks, but her husband, in an inequitable fashion, was not allowed the same access to her own account.

On Page 219 and 220 of the Trial Transcript, when discussing her own finances, Appellant tells us that all of her money was placed in her account and that Respondent's name was not on that account and finally, culminating on Page 221, during the entire time of 1968 through 1984, when the Appellant was investing her

insurance money (the subject of a later argument in this Brief), that the Respondent was paying out of his money, all the day to day household expenses, and when asked about when she deposited any of her money into his account, she attempted to find that, but could not. Appellant dmitted on Page 222 that it would probably be less than $1000 from 1960 until 1987.

In effect, Appellant's own testimony reveals her complete misunderstanding of the concept of equity and so, when Judge Taylor, through his decision, attempted to interject equity into what has been, by his own comments, "a rather unique marital situation", it is only natural I suppose for the Appellant to react the way she has. Unfortunately, Appellant's knee jerk type reaction should not be condoned or supported by this Court.

POINT III

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING THE RESPONDENT AN INTEREST IN THE APPELLANT'S GAINS ON HER INHERITED PROPERTY

This argument is in reality, the focal point of the Appellant's complaint in this case. It goes without saying that in 1968 and 1972, the Appellant received some $71,000 in inheritance money from her parents' estate, which she then, over a period of sixteen (16) years, parlayed in to approximately $180,000, from which she purchased a new home, many expensive curio items and essentially was allowed to live a life free from any financial responsibility to the home, because the husband in this case, was paying all the basic marital debts.

In the arguments of counsel, following the Trial, the Court

reviewed the cases of Newmeyer v. Newmeyer, 745 P.2d 1276, (Utah 1987), Preston v. Preston, 646 P.2d 705 (Utah 1982), and Mortenson v. Mortenson, 760 P.2d 204 (Utah 1988). There is no question that the status of the law in Utah at this time is that inherited property which is received by either party to a marriage, is separate from the marital estate and must either be credited or deducted in an overall division of the estate in a divorce proceeding.

It is interesting to note, however, that even in these most recent inheritance decisions, the Court is still looking at one underlying fact, as set forth coherently by Justice Zimmerman in the Newmeyer case, referring to the Preston case and others, he says this:

> "The overriding consideration is that the ultimate division be equitable - that property be fairly divided between the parties given their contributions during the marriage and their circumstances at the time of the divorce." (Id at 1278)

The Court had all of these facts before it. The fact that for a period of time, from 1947 when the parties were married, until 1987, a period of some forty (40) years when the divorce proceedings were initiated, the Respondent worked a full-time job until his retirement in 1976. During this time the parties raised two (2) children. All the Respondent's income was directed towards paying the mortgage on the home, the basic living expenses of the parties and at least until the mid-60's, providing the sole support for the Appellant and her children.

While it is true that the Appellant then went to work at Whitehead Electric, first on a part-time and then a full-time basis, the Appellant was left free to use her money for whatever she wanted, collecting curio's, going to lunch, going on trips or investing in stocks and bonds. She was allowed to do this under her separate, but equal theory, wherein she had full access to the Respondent's income, a roof over her head and food on the table, but he had no access to her income and in fact, was kept away under the theory that what was hers was hers and what was his was also hers.

The Court further determined contrary to some cases, particularly Mortenson, where this Court has indicated that if the inherited money essentially stayed in the same form, although it may increase, it should not be considered part of the marital estate, that the Appellant's money did not stay in the same form. She invested it in stocks, bonds and other investment vehicles and in fact, parlayed her initial $70,000 investment 2 1/2 times over a period of fourteen (14) years during which, by her own admission, she may have paid $1000 towards the family expenses. She was able, at the time of the divorce and following her retirement, to have amassed assets in the sum of $195,340. This included a new home which she purchased in the Roy area of Weber County, collectibles, cars, CD accounts and other valuable property.

The Respondent on the other hand, had amassed savings of only $28,000 and personal property in the sum of approximately $8644. The family home (upon which Respondent paid the mortgage for the

entirety of the marriage) was valued at $65,000 and so it could be said, was Respondent's primary investment. These amounts totalled to $102,153. In essence then, the Appellant had twice as much money and property in liquid funds at the end of a forty (40) year marriage.

All the Court did, as it is required to do in the previously cited cases of Watson, Stone, Preston, Mortenson and Newmeyer, is to make an equitable division of that financial situation. The Court followed the cases explicitly, gave each party their inheritance, $7400 to the Respondent, which represented the amount of the residence received from his mother and the $71,000, the amount Appellant received from her parents. This still left a disparity between these parties of $28,987 in favor of the Appellant.

In the Appellant's Brief, under separate arguments, she indicates that the boat, Toyota truck and snowmobile were sold and it is not apparent where that money is and other monies, when the Court in fact, did consider these matters in determining the overall valuation, gave the Respondent credit for all these as having received them and added them in to the overall totals. Therefore, in essence, all the money, all the value, all the costs, sales and property was on the table and there was still a disparity even after deducting the inheritances of $28,000. The Court then equalized this disparity through the alimony award as previously discussed.

The Trial Court in making a determination that the Respondent

had an interest in the increase on Appellant's inherited money was totally consistent with this Court's prior decisions. The money did not reside in the same form. The money was invested in to a variety of investment vehicles and at the same time the Appellant was investing merrily on her way, the Respondent was paying the family debts and obligations and maintaining both these parties in the family home.

What the Court's decision effectively does, is gave both of these parties a home, free and clear, gave them personal property which each wanted, either by stipulation or by award and equalized their post-divorce incomes to the point that both can live very comfortably. What could be more equitable or in keeping the Supreme Court decisions than that type of decision.

The problem here is that the Appellant, as she did throughout her marriage, took the position in the divorce proceedings that not only should she have a comfortable home to live in, all the personal property she acquired, but in effect, have half the home that both of these parties had resided in, thus forcing the Respondent to either liquidate or encumber his property and to take a higher portion of his retirement income, so that in effect, the Respondent would either not have a home or have a home encumbered and would not have sufficient income to take care of himself in the later years of his life.

Of course the Appellant does not see these things. She only sees the fact that she was able to acquire approximately $200,000 in property and then again, what was hers was hers and what was

his, because of a forty (40) year marriage, was also one-half hers. Judge Taylor simply would not abide that convoluted thinking and made his decision accordingly.

POINT IV

NOTWITHSTANDING THE ABOVE REFERENCED ARGUMENTS, THE APPELLANT HAS FAILED TO SHOW IN ANY OF HER ARGUMENTS THAT THE COURT ABUSED ITS DISCRETION OR THAT THIS COURT SHOULD SUBSTITUTE ITS JUDGMENT FOR THAT OF THE TRIAL COURT

There is no clearer mandate by this Court in numerous decisions than that of giving great credence to Trial Court decisions in domestic relations matters.

The cases are replete with statements of this Court concerning the standard to be applied when reviewing property and other financial decisions in a domestic relations case.

Citing first from Stone v. Stone as referenced above, in 1967 Justice Crockett said:

> In reviewing the Trial Court's Order in divorce proceedings, there are certain well established principles to be borne in mind. The Findings and Order are endowed with a presumption of validity and the burden is on the Appellant to show they are in error. Even though our Constitutional Provision, Section 9 of Article 8, states that in equity cases this Court may review the facts, we nevertheless take into account the advantaged position of the Trial Judge. Accordingly we recognize that it is his prerogative to judge the credibility of the witnesses and in case of conflict, we assume that the Trial Court believed the evidence which supports the Findings. We review the whole evidence in the light most favorable to them and we will not disturb them merely because this Court might have viewed the matter differently, but only if the evidence clearly preponderates against the Findings. (Id at 803)

This clear expression of the Court's view in these cases has been followed consistently in Watson, Woodward, Preston, Newmeyer and Mortenson cited above. This Court is required to review the findings of the Trial Court below with an eye towards sustaining them, if the Court did not abuse its discretion or act arbitrarily or capriciously and unless the Appellant, upon whose shoulders the burden rests, demonstrates that the evidence clearly preponderates against the Court's findings. The Appellant has failed miserably in meeting this standard.

It is interesting to note that under the new Utah Statute allowing for Domestic Relations Commissioners this case has actually been presented twice to two (2) different finders of fact. The Domestic Relations Commissioner, Maurice Richards, in his original ruling after reviewing the Affidavits, pleadings and hearing some testimony of the parties, determined the key issue that the Respondent was entitled to an interest in the Appellant's increase on her inherited income and that basically the parties should be put in a position that each had the same amount of assets after a forty (40) year marriage.

Judge Taylor, although hearing more evidence and making a more specific decision, did not deviate from the Commissioner's original ruling. Therefore, two (2) finders of fact at two (2) different levels in the Trial Court system found in favor of the Respondent on the key issues. This fact alone preponderates in favor of sustaining the decision that Judge Taylor made.

This Court can review a myriad of domestic relations cases and in every one, the Courts come down with a view towards equity, placing the parties in a reasonable financial position following the divorce, allowing for the totality of the circumstances and fundamental fairness as a Court of equity. Judge Taylor's decision meets all of these important tests.

This Court is directed to the excellent analysis of Justice Zimmerman in the Newmeyer case, a more recent decision which in effect, simply restates Justice Crockett's 1971 opinion. In referring to the arguments of the Appellant in that case, in which the arguments were made that the Supreme Court in effect should review certain financial awards made and make different rulings, Justice Zimmerman said this:

> "This argument, like the that proceeded it, is nothing but an attempt to have this Court substitute its judgment for that of the Trial Court on a contested factual issue. This we can not do under Utah Rules of Procedure 52A... It is elementary that a Judge is not bound to believe one (1) witness testimony to a total exclusion of that of another when acting of the trier of fact, the Trial Judge is entitled to give a conflicting opinion to whatever weight he/she deems appropriate."

This Court on review, should not substitute its Judgment for that of the finder of fact, unless it is apparent that the finder of fact abused its discretion by either not following the law or making an interpretation of fact that is simply not supported.

During the course of a full day Trial, the Court heard six (6) witnesses, examined in excess of twenty (20) exhibits and heard the arguments of counsel. Following that, the Court took the matter

under advisement and rendered a succinct decision which considered all the facts presented in the case.

This is a case where the Appellant does not agree with the decision because it attempts to equalize her financial position without that of her husband, smoething she has fought against since the late 1950's, when by her own testimony, she believed that it was necessary for her to maintain a separate financial existence from that of her husband.

Fortunately, this was not a separate but equal situation, but became a separate and unequal situation for a period of thirty (30) years and the Trial Court refused to allow the practice to continue in the future. The Appellant now should not be allowed to benefit with that convoluted type of approach to a marriage.

The Court should also take note that at the very end, the Appellant even objects to her having to pay her own attorney's fees in what seems to be the ultimate manifestation of the Appellant's greed. In a case where whether inherited or not, she has assets which exceed those of the Respondent, and when she continues to drag this matter through the Courts following constant adverse rulings against her position, Appellant now asks not only for a reversal of the attorney's fee award in the lower Court, but for attorney's fees for this proceeding.

This Court should not reward that type of financial lust. These parties entered into a marriage covenant in 1947 which ended in a Courtroom on January 20, 1989. Unfortunately, human relations being what they are, we can not always predict what the future will

hold when as young people, a man and a woman, move down the road of life.

The Trial Court in a domestic proceeding can not give back the people's lives in this case, nor can they alter concepts, preconceived ideas or living habits. What the Court can do however, and did in this case, is to take the parties as it found them and that was in an inequitable position at the time of the termination of the marriage and attempt to equalize that position and restore some dignity, in this case, to the Respondent.

The Appellant has now continued her crusade to have her "peculiar" point of view adopted by a higher Court. No trier of fact adopted it and this Court should say once and for all to the Appellant, enough, go your way, live your life in whatever manner you choose, but the marriage is over, the property is divided and the matter is ended.

To do anything different would be to condone, even to a small decree, the conduct which Appellant demonstrated throughout the majority of the years of the marriage, which was to create a financial cushion for herself at the expense of her spouse and then, to ask this Court to place her spouses head on it by further depleting his assets.

CONCLUSION

The Appellant has raised numerous issues wherein she takes issue with the lower Court's findings. In every instance the lower Court considered all the evidence presented by both sides. Evidence was presented in two (2) separate hearings wherein both

the Domestic Relations Commissioner and the Trial Court made similar rulings on the key issues. Notwithstanding many separate individual findings, the gravamen of this case is whether or not the financial award in all aspects, including property division and spousal support was equitable. It was equitable in this case and it is supported by the evidence presented. The Trial Court has ample support, both factually and legally, for his decision and the Appellant has failed in all respects, to demonstrate that the award was based upon an inappropriate or inaccurate application of the law, an improper finding of fact and Appellant has not shown by a preponderance that any decision of the Court should be overturned by this Court given the overriding considerations and guidelines utilized by this Court in domestic cases.

This Court should not substitute its judgment for that of the Trial Court and the Trial Court's ruling in its entirety should be sustained.

RESPECTFULLY SUBMITTED this 4 day of January, 1990.

JOHN T. CAINE
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that I mailed four (4) true and correct copies of the above and foregoing Respondent's Brief to the counsel for the Appellant, Pete N. Vlahos and F. Kim Walpole, Attorneys at Law, 2447 Kiesel Avenue, Ogden, Utah 84401, postage prepaid this _____ day of January, 1990.